IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

Crl.Rev.Pet.No. 1230 of 2007()

CRA.406/2006 of II ADDL.SESSIONS COURT, KOLLAM
CRMP.4705/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I, PUNALUR

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REVN. PETITIONER: APPELLANT/PETITIONER

SAMU,
S/O.SUKUMARAN, CHARUVILA VEEDU,
POOCHAKUNNU, ANAKUDY MURI, VAMANAPURAM VILLAGE,
AND NOW RESIDING AT VELARPACHA VEEDU, CHEEPUVAYAL,
THAZHAMEL MURI, ANCHAL VILLAGE.

BY ADV. SRI.J.JAYAKUMAR

RESPONDENTS: RESPONDENT/COUNTER PETITIONER

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.M.DINESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

Crl.R.P.No. 1230/2007

Dated this 18th day of June, 2007

O R D E R

In this revision filed under Section 397 read with Section 401 Cr.P.C, the petitioner, who was accused in Crime No.96/2006 of Anchal police station for an offence punishable under Section 511 of Section 420 IPC, challenges the orders passed by the trial Court as well as the lower Appellate Court refusing the revision petitioner's application filed under Section 452 Cr.P.C seeking permanent custody in respect of two idols - one of Lord Dharmasastha made in Panchaloham and another of Lord Vishnu.

2. Assailing the impugned orders, Adv. Sri. Jayakumar, the learned counsel appearing for the revision petitioner, made the following submissions before me:-

The revision petitioner had agreed to purchase the idol of Lord Dharmasastha on 10.1.2005 from one Sobhana alias sobha for a total consideration of Rupees Eleven Lakhs out of which Rupees Five Lakhs was paid in advance. The idol was handed over to the revision petitioner, who had undertaken to pay the balance amount

of Rupees Six Lakhs as and when the idol was sold by him. The said idol as well as the idol of Lord Vishnu were, thereafter, seized by the police on 14.2.2006 from Vedarpacha house at Cheepvayal where the revision petitioner was residing on rent. Both the idols were produced before the J.F.C.M, Anchal, who ordered the same to be kept in safe custody in the Sub Treasury, Anchal. The revision petitioner filed Crl.M.C No.1068/2006 before this Court under Section 482 Cr.P.C seeking to quash the F.I.R. As per the order dated 31.5.2006, this Court quashed the F.I.R. If so, the properties which were seized from the custody of the revision petitioner were liable to be returned to him under Section 452 Cr.P.C. The revision petitioner, therefore, filed C.M.P.No.4705/2006 before the J.F.C.M, Anchal under Section 452 Cr.P.C. The said petition has been dismissed by that Court. The said order has been confirmed in appeal by the lower appellate Court. Going by the decision in **N.Madhavan v. State of Kerala (AIR 1979 SC 1829),** in a case where after an enquiry or trial, the accused is discharged or acquitted,

the Court should normally restore the property to the person from whose custody it was taken and a departure from this rule of practice should not be lightly made especially when there is no dispute or doubt regarding the question as to the person from whose custody the property was seized. The petitioner also relies on **Malabar Cashewnuts & Allied products v. State of Kerala (1982 KLT 532)**, where, in the event of any rival claim of title, the proper course would be for the disputing party to get their title established before a Civil Court, before the Criminal Court can be requested to pass an order under Section 452 Cr.P.C. Hence, the Courts below were not justified in rejecting the claim of the revision petitioner. In any view of the matter, since Sobhana has no claim over the idol of Lord Vishnu, the Courts below ought to have given custody of the same to the revision petitioner.

3. Adv. Sri. Dinesh, who has filed Crl.M.A.No.5911/2007 seeking the impleadment on behalf of one Sobhana alias Sobha in this revision, made the following submissions before me in support of

his application for impleading:-

The idol of Lord Dharmasastha belonged to the father of the said Sobhana and it was taken by the revision petitioner for the purpose of shooting a cinematographic film and Sobhana had given him a Power of Attorney to move a petition under Section 452 Cr.P.C. But the revision petitioner acted against the interests of Sobhana and that is the reason why she has sought her intervention in this revision.

4. I find myself unable to accept both the above contentions. The only point which arises for consideration in this revision is as to whether the two idols were seized from the physical custody of the revision petitioner so as to entitle him to restoration of the custody of the same, consequent on the termination of the proceedings before the Court. Crime No. 96/2006 of Anchal police station was registered at the instance of one Bhargavan Pillai. The allegation was that the revision petitioner, who was the accused in the said crime, had attempted to commit an offence punishable under Section 420 IPC. On 14.2.2006 the police seized

both the idols – one of Lord Dharmasastha and other of Lord Vishnu from one Vedarpacha House at Cheepvayal. The revision petitioner has not been able to prove before the Courts below that the said house either belongs to him or was in his occupation as a tenant. Admittedly, the revision petitioner was not present when the seizure of the idols was made. No doubt, in Crl.M.C.1068/2006 filed by the revision petitioner for quashing the F.I.R registered against him, this Court as per the order dated 31.5.2006, allowed the revision and quashed the F.I.R. Consequently, the possession of two idols which were seized in the case will have to be restored to the person from whom they were seized. Both the Courts below have concurrently held that there was no evidence to show that two idols were seized from the possession of the revision petitioner. Hence, there is no question of applying the dictum laid down in **AIR 1979 SC 1829.**

5. The request of Sobhana for impleading her in this revision also cannot be entertained. Admittedl, a similar request made by her before the lower appellate Court was rejected and she has not chosen to assail the

said order. If Sobhana is aggrieved by any order passed by the Criminal Court prejudicially affecting her rights, it is open to her to assail the said orders. That cannot be done by impleading herself in a revision filed by somebody else.

6. The Courts below cannot be held to have committed any illegality, irregularity or impropriety in rejecting the claim by the revision petitioner for custody of the idols in question in a claim made under Section 452 Cr.P.C. Apart from the fact that there was no evidence of actual seizure from the physical custody of the revision petitioner, there was also a rival claim over the same. Hence, if the revision petitioner wants to have the custody of the idols of Lord Dharmasastha and Lord Vishnu, the proper course is to approach the Civil Court and get his rights declared and, thereafter, move the Criminal Court for custody.

7. It is true that Sobhana had no claim over the idol of Lord Vishnu. But that does not mean that the revision petitioner is entitled to custody of the said idol as well, since the very same reasons which apply in

respect of the idol of Lord Dharmasastha equally apply in the case of the idol of Lord Vishnu as well. There is no evidence of actual seizure of the said idol from the physical custody of the revision petitioner, so as to enable him to move the Criminal Court under Section 452 Cr.P.C. In respect of said idol also, the remedy of the revision petitioner is to move the Civil Court.

This revision, which is devoid of any merit, is accordingly dismissed. Crl.M.A No.5911/2007 is also dismissed.

V.RAMKUMAR,
JUDGE

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